

SECTION 19. FAMILY AND MEDICAL LEAVE

19-1. Definitions.

- (a) **Daughter or son:** An employee's biological, adopted, or foster child, stepchild, domestic partner's child, legal ward, or child for whom the employee stands in loco parentis and who is:
 - (1) under 18 years of age, or
 - (2) 18 years of age or older and incapable of self-care because of a mental or physical disability.
- (b) **Health care provider:** A doctor of medicine or osteopathy who is authorized to practice medicine or surgery, as appropriate, by the State in which the doctor practices or another person capable of providing health care services, such as a podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse midwife, clinical social worker, or Christian Science practitioner.
- (c) **Parent:** The biological or legal parent of an employee or an individual who stands or stood in loco parentis to the employee when the employee was a child.
- (d) **Serious health condition:**
 - (1) An illness, injury, impairment, or physical or mental condition that involves one of the following:
 - (A) hospital care;
 - (B) absence plus treatment;
 - (C) any period of incapacity due to pregnancy or for prenatal care;
 - (D) a chronic condition that:
 - (i) requires periodic visits for treatment by a health care provider or by a nurse or physician's assistant under the direct supervision of a health care provider; and
 - (ii) continues over an extended period of time or causes recurring episodes of the condition (e.g., asthma, diabetes, or epilepsy);
 - (E) a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, such as Alzheimer's, a severe stroke, or the terminal stages of a disease, and for which the employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider;
 - (F) a period of absence to receive multiple treatments for a non-chronic condition, including time needed to recover from the treatment, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider,

- either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than 3 calendar days in the absence of medical intervention or treatment, such as treatments for cancer , severe arthritis, or kidney disease;
- (G) treatment for substance abuse but not for illness caused by active substance abuse without treatment of the underlying substance abuse problem; and
 - (H) hospital care for complications from a cosmetic treatment but not for the cosmetic treatment.
- (2) The following terms used in the definition of “serious health condition” are defined as follows:
- (A) ***Absence plus treatment.*** A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - (i) treatment 2 or more times by a health care provider, by a nurse, or physician’s assistant under the direct supervision of a health care provider, or by a provider of health care services such as a physical therapist under orders of, or on referral by, a health care provider; or
 - (ii) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
 - (B) ***Continuing treatment by a health care provider:*** Treatment 2 or more times by a health care provider or by a provider of health care services under the direct supervision of a health care provider or treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of a health care provider.
 - (C) ***Hospital care or inpatient care:*** An overnight stay in a hospital, hospice, or residential medical care facility and any period of incapacity or any later treatment in connection with the inpatient care.
 - (D) ***Incapacity:*** Inability to work, attend school, or perform other regular daily activities due to a serious health condition, the treatment of a serious health condition, or recovery from a serious health condition.
 - (E) ***Regimen of continuing treatment:*** Includes but is not limited to a course of prescription medication or therapy requiring special

equipment to resolve or alleviate the health condition, but does not include, by itself, the taking of over-the-counter medications, bed rest, drinking fluids, exercise of similar activities that can be initiated by an individual without a visit to a health care provider.

- (F) **Treatment:** Includes but is not limited to an examination to determine if a serious health condition exists or evaluation of a condition but does not include a routine physical, eye, or dental examination.

19-2. Intent under FMLA. It is the County's intent that this section be:

- (a) used to implement the FMLA; and
- (b) interpreted and applied consistent with the FMLA, except where County statutes and regulations provide greater benefits.

19-3. Eligibility for FMLA leave. An employee is eligible to use FMLA leave if the employee:

- (a) has a total of at least 12 months of County employment, if past and present County employment are combined;
- (b) was paid for at least 1040 hours of work, not including hours of paid leave, during the 12 months before the requested leave is to begin;
- (c) complies with applicable notice requirements described in Section 19-7(b);
- (d) provides medical certification, as described in Section 19-9(b)(2), if requested; and
- (e) has a reason to use the leave that is authorized by the Family and Medical Leave Act.

19-4. Amount of FMLA leave.

- (a) A supervisor must allow an eligible employee to use 12 workweeks of FMLA leave in a leave year.
- (b) A workweek for FMLA purposes is a week that includes the average number of hours that an employee works in a week and includes any holiday that occurs during the week.
- (c) If an employee uses FMLA leave intermittently or as part of a reduced workweek, the employee's FMLA leave entitlement is calculated based on hours instead of weeks.

19-5. Types of leave that may be used as FMLA leave.

- (a) An eligible employee may choose the type of leave that is used as FMLA leave, but must use LWOP if the employee has exhausted all appropriate types of paid leave.
- (b) A supervisor must allow an eligible employee to use LWOP, annual leave, or personal leave days for any FMLA purpose.
- (c) An eligible employee may use sick leave as FMLA leave only if it is an authorized use of sick leave.
- (d) An employee must not use and a supervisor must not designate compensatory time as FMLA leave.

19-6. Authorized reasons for using FMLA leave. An eligible employee may use FMLA leave for any of the following reasons:

- (a) to care for the employee's newborn daughter or son, newly adopted daughter or son, or newly placed foster daughter or son within the first 12 months after the birth, adoption, or placement of the daughter or son;
- (b) to arrange for the adoption or foster care placement of a daughter or son with the employee;
- (c) to obtain prenatal care for the employee;
- (d) to care for, or arrange care for, any of the following with a serious health condition: the employee's spouse, domestic partner, parent, daughter, or son; or
- (e) because of the employee's serious health condition that makes the employee unable to perform the essential functions of the employee's position.

19-7. Application for FMLA leave and notice required of employee.

- (a) ***Application for leave.*** An employee must apply for FMLA leave under the procedures applicable to the particular type of leave requested.
- (b) ***Notice required of employee.***
 - (1) An employee must give the employee's supervisor as much advance notice as possible of the need to use leave for an FMLA purpose so as not to disrupt the work unit unduly.

- (2) If an employee needs to use paid or unpaid leave to care for a new daughter or son, the employee must give 30 calendar days advance written notice or as much notice as possible if the need to use the leave is not foreseeable.
- (3) If an employee could not foresee the need to use leave for an FMLA purpose, the employee must give the supervisor notice as soon as possible or within 2 working days after the employee begins to use leave.

19-8. Supervisor's responsibility for designating leave as FMLA leave.

(a) ***Supervisor's initial designation of leave.***

- (1) A supervisor must designate leave used for an FMLA purpose as FMLA leave even if the employee does not request FMLA leave.
- (2) A supervisor must designate leave by telling the employee orally or in writing that the leave has been designated as FMLA leave and confirming an oral designation in writing under subsection (b).
- (3) A supervisor must designate leave as FMLA leave within 2 working days after an employee requests leave for an FMLA purpose.
- (4) A supervisor must base the designation on information received from the employee or from another person authorized to speak for the employee if the employee is unable to communicate.
- (5) A supervisor may make a provisional designation of leave as FMLA leave if the supervisor asked the employee to submit medical certification for the requested leave but the employee has not submitted the medical certification yet.
- (6) If a supervisor has information from an employee on leave to indicate that the employee is using leave for an FMLA purpose, but the supervisor did not designate the leave before the leave began or within 2 working days of the request, the supervisor may designate the entire period of leave as FMLA leave, unless:
 - (A) the employee did not know that the leave already used before the supervisor designated it as FMLA leave would be considered FMLA leave; and
 - (B) the employee shows that the employee would have taken less FMLA leave or used intermittent FMLA leave if the employee had received the designation earlier.

(b) ***Supervisor's confirmation of designation.***

- (1) If a supervisor designated the leave orally, the supervisor must confirm it by giving the employee a written designation by:
 - (A) the following payday if the payday is a week or more after the employee requested leave; or
 - (B) the 2nd payday after the employee requested leave if the request is made less than a week before a payday.
- (2) A supervisor may designate the leave in writing with any type of written communication, including a simple notation on the employee's leave request or timesheet.

(c) ***Information that a supervisor must give to an employee.*** Within 2 working days after an employee requests leave for an FMLA purpose, the supervisor must inform the employee of:

- (1) whether the requested leave will be counted against the employee's annual FMLA entitlement;
- (2) whether the employee must submit medical certification to support the request for leave and the consequences if the employee fails to submit a required certification;
- (3) what type of paid leave may be used as FMLA leave, depending on the reason for the requested leave;
- (4) whether the employee must pay for health insurance during any period of leave without pay and the obligation of the employee to repay the County for health insurance payments made by the County;
- (5) whether the employee must present a fitness-for-duty certification from the employee's health care provider upon return from FMLA leave;
- (6) the amount of notice the employee must give before using the leave;
- (7) whether the employee must report periodically to the supervisor during the period of leave; and
- (8) other specific information requested by the employee or indicated by the employee's leave request.

19-9. Use of FMLA leave.

(a) Use of FMLA leave to care for a new child.

- (1) An employee may use FMLA leave for a court proceeding or a meeting with a social worker or other person if it is required to finalize arrangements for an adoption or foster care placement.
- (2) An employee who uses FMLA leave to care for a newborn child or child newly placed for adoption or foster care:
 - (A) must use the leave within 12 months of the birth, adoption, or foster care placement of the child; and
 - (B) may use the leave on an intermittent or reduced workweek basis only if the employee's supervisor approves it.
- (3) If an employee uses FMLA leave to care for a new child, the employee's supervisor must also count the leave as parental leave under Section 20 of these Regulations unless:
 - (A) the employee is not eligible to use parental leave;
 - (B) the leave is taken to care for a newly placed foster child; or
 - (C) the employee has exhausted the parental leave entitlement.
- (4) If an employee uses FMLA leave to care for a new child and the FMLA leave does not qualify as parental leave under Section 20 of these Regulations, the employee must not use more sick leave for this purpose than the employee earns in a leave year.

(b) FMLA leave taken for a serious health condition.

- (1) An employee may use FMLA leave on a continuing, intermittent, or reduced work week basis, as needed to care for the employee's spouse, minor child, adult son or daughter incapable of self care, parent, or domestic partner with a serious health condition or because of the employee's own serious health condition.
- (2) A supervisor should require an employee to submit a medical certification to support a request for leave for a serious health condition, if:
 - (A) the supervisor has a reason to suspect the employee of leave misuse or abuse;

- (B) the supervisor is not familiar with the employee;
 - (C) the employee requests the leave on a holiday or at a time when the employee would usually not be able to use leave; or
 - (D) approval of the requested leave would cause a hardship for the work unit or other employees.
- (3) A supervisor must designate a period of disability leave as FMLA leave, even if the employee did not request FMLA leave, if:
- (A) the leave is taken for an FMLA-qualifying reason described in this section of these Regulations;
 - (B) the employee is eligible for FMLA leave; and
 - (C) the employee has not already exhausted the FMLA leave entitlement for the leave year.

19-10. Limits on the use of sick leave as FMLA leave.

- (a) An employee may use sick leave for the entire period of FMLA leave if the FMLA leave is used:
 - (1) to care for the employee's newborn or newly adopted child and the leave qualifies as parental leave under Section 20 of these Regulations;
 - (2) to obtain prenatal care for the employee; or
 - (3) because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's position.
- (b) An employee may only use as much sick leave as the employee earns in a leave year as FMLA leave if the leave is used:
 - (1) to care for the employee's newborn or newly adopted child and the leave does not qualify as parental leave under Section 20 of these Regulations; or
 - (2) to care for, or arrange care for, any of the following with a serious health condition: the employee's spouse, domestic partner, minor child, adult son or daughter incapable of self care, or parent.

19-11. Transfer of employee on FMLA leave. If an employee uses FMLA leave intermittently or as part of a reduced workweek, the department director may temporarily

transfer the employee to another position with equivalent pay and benefits in the same department during the period of FMLA leave.

19-12. Recording of FMLA leave.

- (a) An employee or supervisor must record leave designated as FMLA leave on the timesheet as FMLA leave, and, as applicable, as annual leave, personal leave, sick leave, disability leave or leave without pay.
- (b) An exempt employee under the FLSA may record less than one full day of LWOP as FMLA leave without affecting the employee's exempt status.

19-13. Relation of FMLA leave to other benefits. An employee who uses LWOP under this section must keep all health and life insurance benefits for the entire period of LWOP. After the employee returns from FMLA leave, the employee must repay the County for the employee's share of the cost of the insurance if the employee did not pay for insurance during the LWOP.

19-14. Reinstatement of an employee after FMLA leave.

- (a) When an employee returns from FMLA leave, the department director must reinstate the employee to the same position the employee had before the leave began; or place the employee in an equivalent position
- (b) An equivalent position must have:
 - (1) the same pay and benefits; and
 - (2) the same or substantially similar:
 - (A) duties;
 - (B) working conditions;
 - (C) responsibilities;
 - (D) privileges;
 - (E) status;
 - (F) location;
 - (G) shift or work schedule;
 - (H) overtime opportunity; and
 - (I) opportunity for bonuses.

- (c) An employee is entitled to reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence.
- (d) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.

19-15. Appeal of FMLA leave decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on FMLA leave may file a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to FMLA leave
Firefighter/Rescuer	6, Annual Leave 7, Sick Leave 8, Parental Leave 11, Family Medical Leave 12, Leave Without Pay
OPT/SLT	16, Leave Without Pay 18, Parental Leave 45, Family and Medical Leave
Police	12, Seniority 16, Parental Leave 18, Annual Leave 19, Sick Leave and Sick Leave Donor Procedure 20, Leave Without Pay 21, Compensatory Time 23, Maintenance of Standards/Retention of Benefits 27, Secondary Employment 59, Family Medical Leave Act 63, Childcare